2024:CGHC:45952-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 448 of 2024

Soyam Rama S/o Mukka, Aged About 43 Years Cast-Dorala, R/o Village-Kondhgam, P.S.-Arrabor, Tehsil Bes Camp Arrabor, District-Sukma (C.G.) Presently In Central Jail Jagdalpur (C.G.)

... Petitioner

versus

1. State of Chhattisgarh Through-Principal Secretary, Department of Home (Jail) Government of Chhattisgarh Mantralaya, Mahanadi Bhavan, Atal Nagar Nava Raipur, District-Raipur (C.G.)

2. The Jail and Correctional Services Chhattisgarh, Sector-19, Atal Nagar New Raipur, Through Director General Prisoners, Jail Road, Raipur (C.G.)

3. The Jail Superintendent, Central Jail, Jagdalpur, District- Bastar, Chhattisgarh.

4. District Magistrate/collector, District-Sukma, Chhattisgarh.

...Respondents

For Petitioner	:	Mr. Rajesh Jain, Advocate.
For Respondents/State	:	Mr. S.S. Baghel, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Amitendra Kishore Prasad, Judge

Order on Board

***Per* Ramesh Sinha, Chief Justice**

25.11.2024

1. The defects pointed out by the Registry is overruled.

2. Heard Mr. Rajesh Jain, learned counsel for the petitioner. Also heard Mr. S.S. Baghel, learned Panel Lawyer, appearing for the respondents/State.

3. The present writ petition has been filed by the petitioner with the following prayers:

> *"10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the grievance of the petitioner from the respondent authorities.*
>
> *10.2 That, the Hon'ble High Court may kindly be pleased to quash and set-aside the impugned order No. F4-41//2024, dated 18.09.2024 (Annexure P/3), issued by the respondent No. 1 and declare it to be non-est, without authority of law and contrary to the principle of natural justice.*
>
> *10.3 That, this Hon'ble Court kindly be pleased to direct the respondent authorities to pass fresh order deciding the remission of the petitioner/convict in the light of provisions of law.*
>
> *10.4 Cost of the litigation/petition be allowed.*
>
> *10.5 Any other relief(s) may be given to the petitioner,*

which this Hon'ble Court deem fit and proper in the facts and circumstances of the case."

4. Learned counsel for the petitioner submits that the petitioner has been convicted for the offences punishable under Sections 147 and 302/149 of the Indian Penal Code (IPC) and sentenced to life imprisonment in Session Trial No. 99 of 2008, vide order dated 21.01.2015 by the learned Additional Session Judge, F.T.C., South Bastar Dantewada (C.G.). He also submits that the petitioner has moved an application under Section 432 of the Cr.P.C. which was forwarded by the Superintendent Central Jail, Jagdalpur on 24.04.2024 to the learned trial Court for obtaining the opinion. However, the State, without considering the same, has refused to grant benefit of remission vide communication dated 18.09.2024.

5. Learned counsel for the petitioner states that the State/respondent has rejected the application of the petitioner for grant of remission in a very casual manner without taking into consideration the various judgments and judicial pronouncements of this Court as well as the Hon'ble Apex Court. He placed reliance of the judgment passed by the Hon'ble Supreme Court in ***Rajo alias Rajwa alias Rajendra Mandal vs. State of Bihar & Others***, reported in ***2023 SCC OnLine SC 1068*** has dealt with the issue involved in this petition. He further places reliance on the decision of the Hon'ble Supreme Court in ***Joseph vs. State of Kerala***, reported in ***2023 SCC OnLine 1211***.

6. On the other hand, learned State counsel while opposing the petition, submits that the application of the petitioner has been rejected in light of Rule 358(3)(g)(Two) of the Chhattisgarh Prisons Rules, 1968. The

aforesaid Rule provides that those cases shall not be placed before the Board for consideration of grant of remission in which the convicts have been sentenced under Section 302 and 149 of the IPC.

7. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

8. In the present petition, the application for grant of the benefit of remission of the petitioner has been rejected in light of Rule 358(3)(g) (Two) of the Rules of 1968. The said Rule came into existence vide Notification dated 14.12.2001 issued by the Department of Jail, Government of Chhattisgarh. No other reason has been assigned for rejecting the application of the petitioner.

9. The Supreme Court, in ***Rajo alias Rajwa alias Rajendra Mandal*** (supra) has observed as under:

> *"22. It has been repeatedly emphasized that the aim, and ultimate goal of imprisonment, even in the most serious crime, is reformative, after the offender undergoes a sufficiently long spell of punishment through imprisonment. Even while upholding Section 433A, in Maru Ram v. Union of India [1981] 1 SCR 1196, this court underlined the relevance of post-conviction conduct, stating whether the convict,*
>
> > *"Had his in-prison good behavior been rewarded by reasonable remissions linked to improved social responsibility, nurtured by familial contacts and liberal parole, cultured by predictable, premature release, the purpose of habilitation would have been served, If law—S. 433-A in this case--rudely refuses to consider*

> *the subsequent conduct of the prisoner and forces all convicts, good, bad and indifferent, to serve a fixed and arbitrary minimum it is an angry flat untouched by the proven criteria of reform."*

24. Apart from the other considerations (on the nature of the crime, whether it affected the society at large, the chance of its recurrence, etc.), the appropriate government should while considering the potential of the convict to commit crimes in the future, whether there remains any fruitful purpose of continued incarceration, and the socio-economic conditions, review: the convict's age, state of heath, familial relationships and possibility of reintegration, extent of earned remission, and the post-conviction conduct including, but not limited to – whether the convict has attained any educational qualification whilst in custody, volunteer services offered, job/work done, jail conduct, whether they were engaged in any socially aimed or productive activity, and the overall development as a human being. The Board thus should not entirely rely either on the presiding judge, or the report prepared by the police. In this court's considered view, it would also serve the ends of justice if the appropriate government had the benefit of a report contemporaneously prepared by a qualified psychologist after interacting / interviewing the convict that has applied for premature release. The Bihar Prison Manual, 2012 enables a convict to earn remissions, which are limited to one third of the total sentence imposed. Special remission for good conduct, in addition, is granted by the rules. {See Rules 405 and 413 of the Bihar Prison Manual, 2012.} If a stereotypical approach in denying the benefit of remission, which ultimately results in premature release, is repeatedly

adopted, the entire idea of limiting incarceration for long periods (sometimes spanning a third or more of a convict's lifetime and in others, result in an indefinite sentence), would be defeated. This could result in a sense of despair and frustration among inmates, who might consider themselves reformed– but continue to be condemned in prison.

25. The majority view in Sriharan (supra) and the minority view, had underlined the need to balance societal interests with the rights of the convict (that in a given case, the sentence should not be unduly harsh, or excessive). The court acknowledged that it lies within the executive's domain to grant, or refuse premature release; however, such power would be guided, and the discretion informed by reason, stemming from appropriate rules. The minority view (of Lalit and Sapre JJ) had cautioned the court from making sentencing rigid:

> "*73. […] Any order putting the punishment beyond remission will prohibit exercise of statutory power designed to achieve same purpose Under Section 432/433 Code of Criminal Procedure In our view Courts cannot and ought not deny to a prisoner the benefit to be considered for remission of sentence. By doing so, the prisoner would be condemned to live in the prison till the last breath without there being even a ray of hope to come out. This stark reality will not be conducive to reformation of the person and will in fact push him into a dark hole without there being semblance of the light at the end of the tunnel.*"

10. In ***Joseph*** (supra), the Apex Court, while dealing with a similar

issue, and directing release of the accused therein with immediate effect, had observed as under:

> *"32. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in Sriharan (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot – especially by way of executive instruction, take on such a role, for crimes as it deems fit.*
>
> *33. It is a well-recognized proposition of administrative law that discretion, conferred widely by plenary statute or statutory rules, cannot be lightly fettered. This principle has been articulated by this court many a time. In U.P. State Road Transport Corporation & Anr v. Mohd. Ismail & Ors. {[1991] 2 SCR 274}, this court observed:*

> *"It may be stated that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases."*

34. Likewise, in Chairman, All India Railway Rec. Board & Ors. v. K. Shyam Kumar & Ors. { [2010] 6 SCR 291} this court explained the issue, in the following manner:

> *"Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc."*

35. The latitude the Constitution gives to the executive, under Articles 72 and 162, in regard to matters such as remission, commutation, etc, therefore, cannot be caged or boxed in the form of guidelines, which are inflexible.

36. This court's observations in State of Haryana v. Mahender Singh {(2007) 13 SCC 606} are also relevant here:

> *"38. A right to be considered for remission keeping in view the constitutional safeguards under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder.*
>
> *39. It is now well-settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules."*

37. Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India – read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or

done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other nonviolent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated."

11. Even this Court, in a number of cases, relying on the decision of the Hon'ble Supreme Court in ***Sangeet vs. State of Haryana*** {***AIR 2013 SC 447***}, ***Mohinder Singh vs. State of Punjab*** {***2013 Cri.L.J. 1559***}, ***Laxman Naskar vs. Union of India*** {***(2000) 2 SCC 595***}, ***Union of India vs. Sriharan*** {***(2016) 7 SCC 1***} and ***Ram Chander vs. State of Chhattisgarh*** {***AIR 2022 SC 2017***} had directed remitted the matter back to the State to decide the case of the petitioners therein and to consider the matter in light of the judgments rendered by the Hon'ble Supreme Court in the cases (supra).

12. The order passed by the respondent authorities rejecting the application of the petitioner for grant of remission dated 18.09.2024 is non-speaking and has been passed without application of mind and without taking into consideration the ratio laid down by this Court as well as the Hon'ble Apex Court in the cases (supra), and as such, the same is set aside.

13. Consequently, the matter is remitted to the State Government to decide the application of the petitioner for remission afresh. The State Government will call for the opinion of the concerned learned Additional Sessions Judge / Sessions Judge afresh, who will provide his opinion on the petitioner' application within one month from the date of requisition as per ***Laxman Naskar*** (supra) and thereafter, the State Government will decide petitioner's application within two month from the date of receipt of opinion from learned Judge in light of the decisions rendered by the Hon'ble Supreme Court in the cases (supra) and also the observations made herein.

14. With the aforesaid observations / directions, the instant writ petition stands **allowed**. No order as to cost(s).

Sd/-
(Amitendra Kishore Prasad)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Brijmohan